IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

SA.No. 737 of 1994(D)

(AGAINST A.S.NO.1/91 OF THE SUB COURT, KASARAGOD AND IN OS.206/1986 of ADDL.MUNSIFF, KASARAGOD)
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APPELLANT: APPELLANT:PLAINTIFF:

C.ABDUL KHADER, S/O.MOOSA,
AGED 52 YEARS, MERCHANT AND AGRICULTURIST,
MUSLIM, RESIDING AT KOTTAKKAL IN BADADKA VILLAGE,
KASARAGOD TALUK.

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENT:RESPONDENT:DEFENDANT:

***CHANA, AGED 63 YEARS,**
S/O.KANNAN, HINDU,
AGRICULTURIST, RESIDING AT PALAR IN ADOOR VILLAGE
POST, MANIMOOLA (VIA CHENGALA,
KASARAGOD TALUK. (D I E D)

***ADDL.RESPONDENTS 2 TO 12 IMPLEADED OF LEGAL HEIRS OF DECEASED RESPONDENT.**

R2. KUNHAMMA, W/O.LATE CHANA, AGED 64 YEARS,
RESIDING AT PALAR IN ADOOR VILLAGE POST,
MANIMOOLA (VIA) CHENGALA, KASARAGOD TALUK.

R3. T.C.NARAYANAN, S/O.LAATE CHANA, AGED 44 YEARS,
CULTIVATOR, RESIDING AT PALAR HOUSE, AROOR VILLAGE,
KASARAGOD TALUK, P.O. MANIMOOLA.

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R4. T.C.KUNHIKANNAN, S/O.LATE CHANA, AAGED 42 YEARS, CULTIVATOR RESIDING AT PALAR HOUSE, AROOR VILLAGE, KASARAGOD TALUK, P.O. MANIMOOLA.

R5. T.C.GOPALAN, S/O.LAATE CHANA, AGED 40 YEARS, CULTIVATOR, RESIDING AT .....DO.....DO....

R6. T.C.KUNHIRAMAN, S/O.LATE CHANA, AGED 35 YEARS, CULTIVATOR, RESIDING AT ....DO.....DO.....

R7. T.C.SREEDHARAN, S/O.LATE CHANA, AGED 28 YEARS, CULTIVATOR, RESIDING AT ....DO....DO.....

R8. T.C.RADHAKRISHNAN, S/O.LATE CHANA, AGED 28 YEARS, CULTIVATOR, RESIDING AT ....DO...DO....

R9. T.C.PADMAVATHI, W/O.KUNHITHEEYAN, AGED 30 YEARS, CULTIVATOR, RESIDING AT KUNHIVALAPPU OF KUTTIKODE VILLAGE, KASARAGOD TALUK, P.O. KUTTIKODE.

R10. T.C.LAKSHMI, W/O.ANANTHAN, CLOTH STORES, CULTIVATOR, MUNNAD OF BADIADKA VILLAGE, KASARAGOD TALUK, P.O. MUNNAD (VIA) CHINGALA.

R11. T.C.RADHAMANI, D/O.LATE CHANA, AGED 25 YEARS, RESIDING AT PALAR HOUSE, AROOR VILLAGE, KASARAGOD TALUK, P.O. MANIMOOLI.

R12. T.C.NALINI, D/O.LATE CHANA, AGED 24 YEARS, RESIDING AT ....DO..DO....

*ADDL.RESPONDENTS 2 TO 12 IMPLEADED OF LEGAL HEIRS OF DECEASED SOLE RESPONDENT AS PER ORDER DTD.23/06/06 IN CMP.NO.300/95 IN S.A.

BY ADV. SRI.P.RAVINDRAN
SRI.C.MOHANAN

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.SASIDHARAN NAMBIAR,J.

S.A .NO. 737 OF 1994

Dated 20th September 2007

J U D G M E N T

Plaintiff in O.S.206 of 1986 on the file of Additional Munsiff court, Kasargod is the appellant. Original respondent was the defendant. Additional respondents are his legal heirs, who were impleaded in the second appeal consequent to his death. Appellant instituted the suit contending that deceased respondent used to obtain money from him agreeing to supply agricultural produces and the practice was to struck the balance depending on supply of agricultural produces and the price fetched and there was dispute with regard to the actual amount due in 1984 and it was resolved through mediation and Ext.A1 agreement was entered into whereunder the amount due was fixed as Rs.13,000/- and incorporating the terms Ext.A1 was executed and respondent was permitted to pay amount in two instalments providing that if it is paid within the period fixed, no interest is to be paid and if not, interest is to be paid at 10% per annum.

Contending that in spite of notice respondent did not pay the amount, suit was instituted for realisation of the amount. Respondent in his written statement disputed the transaction as well as the agreement. According to respondent there was no dispute with the appellant regarding the transaction and when agricultural produces are supplied, price will be calculated and amount adjusted and there was no mediation or agreement as alleged and therefore appellant is not entitled to the amount claimed.

2. Learned Munsiff on the evidence of Pws.1 and 2, DW1, Exts.A1 and A2 and B1 dismissed the suit finding that Ext.A1 agreement was not executed by respondent and therefore appellant is not entitled to the decree sought for.

3. Appellant challenged the decree and judgment before Sub court, Kasargod in A.S.1 of 1991. Learned Sub Judge on re-appreciation of evidence set aside the finding of learned Munsiff and found that Ext.A2 agreement was executed, holding that finding of the trial court was arrived on trivial discrepancies. On re-appreciation of evidence learned Sub Judge found that Ext.A2 agreement was executed. But relying on Section 25

(3) of Indian Contract Act, learned Sub Judge held that Ext.A2 is unenforceable and confirmed the dismissal of the suit. It is challenged in the second appeal.

4. Appeal was admitted formulating the following substantial question of law.

> Whether finding of first appellate Court that Ext.A2 is unenforceable under Section 25(3) of the Contract Act is sustainable, when Ext.A3 does not relate to a time barred debt and under the agreement respondent agreed to pay the amount due as on the date of settlement of accounts.

5. Though on the death of respondent his legal heirs were impleaded, they did not appear. Learned counsel who appeared for the original respondent submitted that legal heirs did not instruct him to appear or argue the case for them. Learned counsel appearing for appellant was heard.

6. Though learned Munsiff on appreciating the evidence found that Ext.A1 agreement was not executed by deceased respondent, first appellate court on re-appreciating the evidence found that the said finding is not sustainable and the said finding of the learned Munsiff was based on flimsy grounds. It was held that

execution of Ext.A2 agreement was proved by the evidence of Pws.1 and 2 and it was not disputed by DW1 at the time of evidence. That factual finding of first appellate court cannot be interfered by re-appreciating the evidence.

7. The only reason on which appellant was non suited was the finding that Ext.A2 agreement is unenforceable under Section 25 (3) of Indian Contract Act. Section 25 of Indian Contract Act deals with agreements without consideration. Under the Section an agreement made without consideration is void unless it is in writing and registered and is made on account of natural love and affection or is a promise to compensate a person who has already voluntarily done something or it is a promise made in writing and signed by a person to pay a debt barred by law of limitation. What is provided under the section is that an agreement made without consideration is void unless they relate to agreements as provided under sub Section 1 to 3. Sub Section 3 provides that unless it is a promise made in writing and signed by the person to be charged there with or by his agent generally or specially authorised in that behalf to pay wholly or in part a debt of which the creditor might

have been enforced payment but for the law for the limitation of suits, the agreement is void. Ext.A2 shows that it was executed pursuant to a mediation whereunder the amount due was fixed. Respondent was granted time to pay the same without interest providing that amount is paid in two instalments on the dates given. It cannot be said that Ext.A2 was an agreement without consideration. Under Section 2(d) when, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does not abstains from doing, or promises to do or to abstain from doing, something such act or abstinence or promise is called a consideration for the promise. It cannot be said that when appellant granted the time for payment and also agreed not to claim interest for the amount due if paid on the agreed instalment dates. It is a valid consideration.

8. Even in the written statement respondent did not dispute the fact that he used to borrow money from the appellant and it was being adjusted by supply of agricultural produces by respondent. Evidence of PW1 with Ext.A2 establish that there was dispute with regard to the actual amount due and there was a mediation whereunder the amount due was fixed at Rs.13,000/- and

respondent was granted facility of repaying that amount in two instalments on the dates fixed under Ext.A2 agreement thereafter it was executed. The contention raised by respondent in the written statement was that Ext.A2 was not executed by him and therefore he is not liable to pay the amount. When the evidence of Pws.1 and 2, which was accepted by the first appellate court, establish that Ext.A2 agreement was executed pursuant to mediation and liability was fixed, unless it is proved that the amount so fixed was not due, it cannot be said that Ext.A2 was executed without consideration. Ext.A2 shows that liability was fixed at Rs.13,000/- and respondent agreed to pay the same in two instalments. In such circumstance, finding of first appellate court that Ext.A2 is void under Section 25(3) of Indian Contract Act is not sustainable. Evidence establish that Ext.A2 was executed for consideration. The amount due to appellant was borrowed by respondent subsequent to 1982. The amount due in the balance, deducting the value of agricultural produces supplied. In such circumstance, appellant is entitled to the decree sought for in the suit.

9. Second appeal is allowed. The decree passed by

learned Munsiff and learned Sub Judge are set aside. Suit stands decreed for Rs.13,343.50 with interest at 6% per annum from the date of the suit and cost. Appellant is entitled to realise the same from the estate of the respondent left in the hands of the additional respondents 2 to 12.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.NO.737 OF 1994

20th September 2007

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